

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33613
Docket No. CL-33643
99-3-97-3-11

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11670) that:

1. The Carrier violated Rules 2, 11, 18, 27, 36 (a) and Rule 41 (a) of the current Clerical Agreement.
2. The Carrier will now be required to allow displacement and training to Claimant on Position #633 HD, TOFC Clerk, and provide dead head rate from City of Industry to Taylor Yard.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On July 3, 1995, Claimant, who has accumulated more than 20 years of service with the Carrier, sought to displace one of the Head Clerks at the Carrier's City of Industry, California intermodal operations per Rule 41(a). The incumbent Head Clerk

was junior to Claimant. The intermodal Hub Manager barred Claimant's displacement. Because Claimant was a senior employee and held a right to a wide open bump, Claimant requested an Unjust Treatment Hearing which was convened on August 17, 1995.

This dispute revolves around the proper interpretation and application of Rule 27 of the applicable Agreement which reads:

"PROMOTIONS, ASSIGNMENTS, DISPLACEMENTS

Employees covered by these rules shall be in line for promotion. Promotions, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: the word "sufficient" is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy, or to displace a junior employee, where two or more employees have adequate fitness and ability. In such cases the senior employee will be awarded the position unless it is obvious he cannot qualify. Employees shall be given cooperation in their efforts to qualify."

Since Claimant held the greater seniority than the incumbent Head Clerk, the issue herein is whether Claimant possessed sufficient fitness and ability so that she could have mastered the position of Head Clerk within a reasonable amount of time.

Evidence at the Unjust Treatment Hearing adduced that the position of Head Clerk oversees employees in intermodal operations on a particular shift. The Hub Manager pointed out that the Head Clerk must know 41 different computer formats and must have extensive experience with intermodal operations. In essence, the Head Clerk must be able to perform virtually every, if not all, jobs at the Hub.

Claimant relied on her many years of experience as a Chief Clerk Crew Dispatcher and Interlocking Operator to support her assertion that she could have qualified for the Head Clerk job within a reasonable period of time. Claimant had very little intermodal operations experience. Some years ago, she worked an intermodal position wherein she checked trucks for paperwork, seals and loads. The Hub Manager

suggested that Claimant displace to a position lower in the intermodal hierarchy than Head Clerk so that she could learn intermodal operations and thus, attain the fitness and ability to later bid on or displace to a Head Clerk position. Claimant declined because she wanted to exercise her seniority to a high rated position.

The Carrier has the discretion to determine an employee's fitness and ability so long as it does not abuse its discretion. In this case, Claimant has a plethora of railroad experience but unfortunately, only a minuscule of her experience was in the intermodal field, which is an area very different from usual railroad operations. Also, she was involved in intermodal work many years ago. Intermodal operations are dynamic. They have substantially changed over the years so that Claimant's experience is worthless.

It is true that lack of experience is usually one of many factors that the Carrier should take into account when evaluating an employee's fitness and ability but sometimes, little or no experience can manifest that an employee is not fit and able to do the job. In this case, Claimant would have to master a quasi-supervisory position which oversees all operations across an entire shift. Claimant would be responsible for directing employees and insuring smooth operations. Given her dearth of intermodal experience, it is highly unlikely that she could qualify for the position within a reasonable period of time. Therefore, under the peculiar circumstances of this case, we find that the Carrier did not abuse its discretion when it determined that Claimant lacked the fitness and ability to fill the position as Head Clerk. She could not learn all the complex components of the Head Clerk position within a reasonable time period.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 16th day of November 1999.